Reading File

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

March 11, 1996

R.M. "Jim" Nelson
Forest Supervisor
Humboldt - Toiyabe National Forests
2035 Last Chance Road
Elko, NV 89801

Dear Mr. Nelson:

The U.S. Environmental Protection Agency (EPA) has reviewed the Final Environmental Impact Statement (FEIS) for the **DASH Mining Project, Elko County, Nevada.** Our comments are provided pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality's NEPA Implementation Regulations, and Clean Air Act Section 309.

In our October 2, 1995, comment letter regarding the Draft Environmental Impact Statement (DEIS), we expressed objections to the proposed project based on its potential impacts to water quality from design and placement of waste rock dumps in drainages. We also requested additional information in the FEIS regarding potential impacts to water quality, waste rock handling and dump design, mitigation measures, baseline water quality, alternative to the proposed project, air quality impacts, and cumulative impacts.

Water Quality

The FEIS does not sufficiently address sulfate and metals production by mine drainage. We raised this issue in commenting on the DEIS. More specifically, we remain very concerned about the amount of sulfate, trace elements, and metals generation and the effects they could have on the aquatic environment. The FEIS mentions sulfate generation and its potential effects on water quality on page 3-8 and refers the reader to section 4.2.6 and 4.2.7. However, we could not find a discussion of these effects in those sections. We recommend that the Forest Service conduct modelling to predict the concentrations and effects of these contaminants in affected streams before approving the Plan of Operation, so that any necessary mitigation can be determined. We respectfully request a copy of any additional modeling that is conducted in this regard.

We remain concerned about the efficacy of the waste rock dump surfaces to reduce infiltration of meteoric water to the degree that they would preclude generation of contaminated

drainage. In light of the climatic conditions of the Independence Mountains, we believe that a significant amount of rain and snowmelt would not be evapotranspirated at the surface and would move through the waste rock dumps. For this reason, it is imperative that rigorous waste rock characterization be conducted. Furthermore, we reiterate our recommendation that, in addition to isolating material with acid potential, Independence Mining Company, Inc. (IMC), be required to thoroughly admix it with neutralizing material in waste rock dumps.

Clean Water Act Section 404

We acknowledge that the Forest Service and IMC have attempted to minimize and avoid impacts to jurisdictional waters. However, we continue to be concerned about certain issues, including the lack of information on why it is not feasible to place the dumps outside of U.S. waters, the potential water quality impacts of placing waste rock dumps in U.S. waters, and the lack of mitigation for riparian losses, as detailed below.

I. Alternatives [40 CFR 230.10(a)]

As we stated in our DEIS comment letter, the 404(b)(1) Guidelines **do** require that the chosen alternative be the least environmentally damaging practicable alternative (contrary to the response provided under 31., par. 1, p. 6-52 of the FEIS). In fact, if a project is not water-dependent and the project proposes to fill a "special aquatic site" [wetlands are included in this category; see 40 CFR 230.41] the Guidelines establish a regulatory presumption that a less environmentally-damaging practicable alternative exists, unless the permit applicant can clearly demonstrate otherwise [see 40 CFR 230.10(a)(3)].

We still do not believe that this presumption has been rebutted for the proposed placement of the waste rock dumps in the headwaters of Sheep Creek and the Southern Tributary of Sheep Creek. As we stated in our comments on the DEIS, because of the direct impact to waters, and the potential impacts to water quality, IMC must clearly demonstrate why these dumps cannot be located entirely outside of drainages. For example, the FEIS dismissed the sidehill dump because 1) it would be too visible from the highway, 2) it would be less stable than the cross valley fill design (although it would meet the stability criteria established by the Forest Service), and 3) the "USFS analysis shows that the haul cost increase would **likely** have a significant detrimental effect on the economic viability of the project. Detailed cost and stability analyses are...summarized in the FEIS" (p. 6-45, emphasis added).

This is not enough information to establish that the cross valley fills are the only practicable alternative. More specifically: 1) although we agree that a highly visible dump is

undesirable, we do not believe this consideration should outweigh potential impacts to federally protected aquatic resources, particularly because there is no federal law that applies to visual impacts that supersedes the Clean Water Act. And, it may well be possible to mitigate the visual impact with good design and revegetation; 2) the FEIS acknowledges that the sidehill dump meets the Forest Service stability criteria, so it would not be infeasible for that reason; and 3) we did not find a summary of the "detailed cost analyses" in the body of the FEIS so we cannot determine whether the sidehill dump would be impracticable for economic reasons. All that is provided is the above statement referring to the "USFS analysis."

Reference to "USFS analysis" is repeated numerous times in the FEIS as justification for eliminating other less damaging alternatives, including the consolidation of the dump sites to eliminate the Northwest Dump Site, and the Ore Haul to Mill Via California Mountain Haul Road System alternative. For the latter alternative, the FEIS also states that least phacelia habitat and other wetlands and waters of the U.S. would be affected. Also, the crossings would be over ephemeral drainage, and may be eligible for a nationwide permit (however, the U.S. Army Corps of Engineers could include these activities as part of the individual Clean Water Act Section 404 permit). The non-point source pollution impacts of constructing a new mining road in a currently roadless area must be considered when weighing costs and benefits, as pointed out by the Nevada Division of Environmental Protection (NDEP). We cannot, however, judge whether widening the California Haul Road is either impracticable or more environmentally damaging than the preferred alternative without more detail on 1) how the Forest Service judged the increased cost to be significantly detrimental to the project's economic viability, and 2) how much and what quality of aquatic habitat would be impacted if the road were widened.

II. Significant Degradation [40 CFR 230.10(c)]

We appreciate the additional information in the FEIS on the how the drainage water would be diverted around the pit and some of the dumps, and directed into the under-dump drains. As we have stated above, however, IMC has yet to demonstrate that it is not practicable to locate the dumps outside of U.S. waters, or completely reroute the drainage around the dumps (such that zero discharge would result). If such measures prove impracticable, we will recommend to NDEP that they require a National Pollutant Discharge Elimination System (NPDES) permit under Section 402 of the Clean Water Act for the discharge of any water downstream of the dumps. If water quality monitoring shows that pollutants are being added to the discharge from the dumps, the stream would have to be rerouted outside the dump or the water treated.

III. Mitigation [40 CFR 230.10(d)]

We continue to be concerned that the H-Pit mitigation site does not provide in-kind habitat replacement. The H-Pit provides open water habitat for waterfowl and shorebird feeding and resting, but it does not replace many of the functions and values of the affected riparian habitat. Replacement of these functions and values (in-kind habitat) is critical to many species of birds even if the water flows only seasonally (R. Johnson, U.S. Park Service, San Francisco, pers. comm.). We will continue to recommend to the Corps of Engineers that the proposed riparian losses that are jurisdictional waters of the U.S. be documented as to their acreage and replaced in kind (that is, not at the H-Pit), either as part of the proposed restoration in the northern DASH area that was burned in 1992 or elsewhere. The current conditions in the northern burn area should be fully documented, including a list of what plant species have recolonized the burn and a rough index of their relative abundance, so that the potential for habitat improvement can be assessed. If the potential here is poor, or there is not enough acreage to replace both the three acres of non-jurisdictional loss, and the acreage of jurisdictional riparian habitat, mitigation opportunities such as maintaining the fencing along the North Fork of the Humboldt River below Big Springs mine, land exchanges, or enhancement on nearby private land should be explored.

We appreciate the opportunity to review this FEIS. I encourage you to have your staff contact either Jeanne Geselbracht at (415) 744-1576 or Harriet Hill at (415) 744-1969 to discuss these important issues.

Sincerely,

David J. Farrel, Chief
Office of Federal Activities

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cc: Doug Zimmerman, NDEP
Jim Williams, NDEP
Kevin Rouke, Corps of Engineers